

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARJORIE FERRELL, et al.,)	
)	Civil Action No. C-1-01-447
Plaintiffs,)	
)	Judge Sandra S. Beckwith
v.)	Magistrate Judge Timothy S. Hogan
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	

PLAINTIFFS' MOTION FOR DISBURSEMENT OF FUNDS

Plaintiffs, by their counsel, hereby move for entry of an Order granting their Motion for Disbursement of Funds. Plaintiffs' counsel has conferred with Defendants' counsel, who do not oppose this motion. In support, thereof, Plaintiffs state as follows:

1. By Order of June 19, 2007, this Court granted final to the parties' settlement and entered its Final Judgment and Order of Dismissal [Doc. No. 187]. As thirty (30) days have elapsed and no appeals have been taken, the settlement is now final under the terms of the Settlement Agreement approved by the Court. *See* Settlement Agreement [Doc. No. 177, #7] ¶ 1(l).

2. By order of January 18, 2007, the Court appointed Complete Claim Solutions, Inc. ("CCS") as the Notice Administrator with responsibilities for: (a) establishing a post office box and toll-free phone number (to be included in the Notices to the Class) for purposes of communication with Class members; (b) disseminating notice to the Class; (c) establishing a website for purposes of posting the Notice, Settlement Agreement and related documents; and (d)

accepting and maintaining documents sent from Class members, including exclusion requests.

Preliminary Approval Order [Doc. No. 179] ¶ 6.

3. The final invoice for CCS's fees and expenses is attached as Exhibit A. The amount of fees invoiced exceeded the initial estimate, primarily because of an unexpectedly high volume of telephone inquiries from Class members. The final invoice, which totals \$79,417.41, reflects substantial reduction in the fees actually incurred.¹ Plaintiffs' counsel believe that the invoice reflects fees and expenses that were reasonably and necessarily incurred by CCS in fulfilling its obligations as Notice Administrator. Plaintiffs and their counsel respectfully request that the Court approve payment of the CCS invoice from the settlement fund.

4. The Court has also approved a *cy pres* distribution to: (1) the National Women's Health Resource Center (www.healthywomen.org); and (2) the Society for Women's Health Research (<http://www.womenshealthresearch.org>). See Settlement Agreement [Doc. No. 177, #7] ¶ 8; Final Judgment and Order of Dismissal [Doc. No. 187] ¶ 6. Following the payment of the CCS invoice, the remaining funds will allow for payment of approximately \$209,498.53 to each organization. In accordance with the terms of the Settlement Agreement approved by the Court, Plaintiffs and their counsel respectfully request that the Court approve this *cy pres* distribution.

WHEREFORE, Plaintiffs and their counsel respectfully requests that this Court grant their Motion and enter the Proposed Distribution Order, attached hereto.

¹ At the preliminary approval stage, CCS estimated that its fees would be approximately \$35,000.00. See Cafferty Decl. [Doc. No. 177, Jan. 5, 2007], Ex. D. In the invoice attached as Exhibit A, CCS's fees total \$68,008.03, which is \$33,008.03 over the estimate. CCS initially invoiced \$102,818.61 in fees, but has agreed to a reduction of \$34,810.58 in the amount charged.

Dated: July 31, 2007

Respectfully submitted,

By: /s/Patrick E. Cafferty
One of Plaintiffs' Counsel

Janet G. Abaray
BURG SIMPSON ELDREDGE,
HERSH JARDINE PC
312 Walnut Street, Suite 2090
Cincinnati, Ohio 45202
Tel: (513) 852-5600

Joseph E. Conley, Jr.
BUECHEL & CONLEY
25 Crestview Hills Mall Road
Suite 104
Crestview Hills, Ky. 41017
Tel: (859) 578-6600

Co-Liaison Counsel for Plaintiffs

Kenneth A. Wexler
Jennifer F. Connolly
WEXLER TORISEVA
WALLACE LLP
One North LaSalle, Suite 2000
Chicago, Illinois 60602
(312) 346-2222

Marc H. Edelson
HOFFMAN & EDELSON
45 West Court Street
Doylestown, Pennsylvania 18901
(215) 230-8043

Stacey L. Mills
Lori A. Johnson
HEINS MILLS & OLSON, P.C.
3550 IDS Center, 80 South Eighth Street
Minneapolis, MN 55402
(612) 338-4605

Patrick E. Cafferty
CAFFERTY FAUCHER LLP
101 N. Main Street, Suite 450
Ann Arbor, MI 48104
(734) 769-2144

Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARJORIE FERRELL, et al.,)	
)	Civil Action No. C-1-01-447
)	
Plaintiffs,)	Judge Sandra S. Beckwith
)	Magistrate Judge Timothy S. Hogan
v.)	
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I, Patrick E. Cafferty, hereby certify that a copy of the foregoing *Plaintiffs' Motion for Distribution of Funds* was electronically filed. Those attorneys who are registered with the Electronic Filing System may access these filings through the Court's System, and notice of these filings will be sent to these parties by the operation of the Court's Electronic Filing System.

Dated: July 31, 2007

By: /s/Patrick E. Cafferty
CAFFERTY FAUCHER LLP
Patrick E. Cafferty
101 N. Main Street Suite 450
Ann Arbor, Michigan 48104
Tel: 734-769-2144
Fax: 734-769-2144
pcafferty@caffertyfaucher.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

_____)	
MARJORIE FERRELL, et al.,)	Civil Action No. C-1-01-447
)	
Plaintiffs,)	Judge Sandra S. Beckwith
)	Magistrate Judge Timothy S. Hogan
v.)	
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	
_____)	

[PROPOSED] ORDER OF DISTRIBUTION

Upon consideration of Plaintiffs' Motion for Disbursement of Funds, it is hereby ORDERED that the MOTION is GRANTED in accordance with the Final Judgment and Order of Dismissal [Doc. No. 187]. In furtherance hereof, distribution of the proceeds of the settlement fund shall be as follows:

1. Complete Claim Solutions, Inc., the Court appointed Notice Administrator, shall be paid \$79,417.41; and
2. The funds remaining following payment of court awarded fees and expenses shall be divided into substantially equal parts and paid in substantially equal amounts to: (a) the National Women's Health Resource Center; and (b) the Society for Women's Health Research.

SO ORDERED this ____ day of _____, 2007.

SANDRA S. BECKWITH, CHIEF JUDGE
UNITED STATES DISTRICT COURT